

COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JAMIE K.,

Petitioner,

v.

THE SUPERIOR COURT OF SAN  
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Real Party in Interest.

D053619

(San Diego County  
Super. Ct. No. N013695)

Proceedings for extraordinary relief after reference to a Welfare and Institutions  
Code section 366.26 hearing. Michael Imhoff, Commissioner. Petition denied. Stay  
vacated.

Jamie K. seeks writ review of orders terminating her reunification services and setting a Welfare and Institutions Code section 366.26<sup>1</sup> hearing regarding her daughter, Emily K. We deny the petition.

#### FACTUAL AND PROCEDURAL BACKGROUND

On June 22, 2006, the Los Angeles County Department of Children and Family Services (DCFS) petitioned on behalf of two-month-old Emily under section 300, subdivision (b), alleging she was at a substantial risk of harm because on June 19, while under the influence of alcohol, Jamie pushed her in a stroller across a busy intersection against a right light, and Jamie's history of alcohol use made her unable to provide regular care and supervision.

Jamie was arrested for child endangerment for the June 19 incident. Blood tests showed her alcohol level was .28 and .27. She denied being at the intersection or having such high blood alcohol readings. The social worker reported Jamie had served in the military and had previous psychiatric hospitalizations, suicide attempts, alcohol dependence, posttraumatic stress disorder (PTSD) and a history of being raped.

Jamie stipulated to an amended petition, and the court declared Emily a dependent child of the court, ordered her removed from Jamie's custody and ordered Jamie to participate in substance abuse treatment and testing and parenting classes.

In a report dated December 12, 2006, the social worker reported Emily was living with her maternal grandparents (the grandparents), in San Diego County. Jamie had

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

some participation in counseling, substance abuse treatment and parenting education. At the six-month review hearing, the court continued reunification services.

In February 2007 Jamie moved to San Diego County and said she would participate in alcohol-related treatment and testing and that she was attending parenting classes and had an Alcoholics Anonymous sponsor. The social worker was not able to verify these claims. At the 12-month review hearing, the court found Jamie was in partial compliance with her case plan, continued her services and continued Emily's placement with the grandparents. The matter was transferred to San Diego County and, on July 26, the San Diego County Juvenile Court ordered Jamie to report for an evaluation by the Substance Abuse Recovery Management System (SARMS) program.

Subsequently, the social worker said Jamie was making substantial progress and recommended returning Emily to her with family maintenance services. He reported Jamie began residential substance abuse treatment at KIVA on September 28, 2007, and was having negative tests for drugs and alcohol, was participating in therapy and was having regular visits with Emily. At the 18-month hearing on February 11, 2008, the court ordered Emily returned to Jamie's custody.

However, on June 3, 2008, the San Diego County Health and Human Services Agency (Agency) petitioned on Emily's behalf under section 387, alleging Jamie could no longer provide adequate care in that on May 25 she was arrested for driving under the influence of alcohol, resisting arrest and assaulting a police officer. The court made a prima facie finding on the petition and ordered Emily detained with the grandparents.

At the jurisdictional and dispositional hearing in August 2008, the social worker testified Jamie was a very loving parent and had cooperated with the provisions of her case plan, and Emily appeared to thrive in her care. The social worker said Jamie had not received treatment for PTSD as a part of her reunification services because it had not been an issue in the case. She began receiving treatment for PTSD after her relapse and said she was dedicated to doing whatever she could to reunify with Emily. The social worker said he was concerned about Jamie's ability to be a safe parent for Emily because of her alcohol abuse.

The supervisor of Jamie and Emily's visits during the two months before the hearing testified Jamie showed good parenting skills, and Jamie and Emily appeared to share a strong bond. The coordinator of supervised visitation agreed and said Jamie seemed to be conscientious and concerned about seeing Emily.

Jamie testified that before the current social worker began working on her case, her services were inconsistent and the grandparents blocked her visitation. She said several doctors had diagnosed her with PTSD and her May 2008 arrest was related to this disorder because when the police arrested her, she did not recognize them as police officers and thought they would try to rape her. She said she was committed to being sober and wanted to be a good mother and to do everything she could to reunify with Emily.

After considering the documentary evidence, testimony and argument, the court found the allegations of the petition to be true, removed Emily from Jamie's custody and

placed her with the grandparents. It found Jamie had not made substantive progress with the provisions of her case plan, terminated services and set a section 366.26 hearing.

Jamie petitions for review of the court's orders. (§ 366.26, subd. (l); Cal. Rules of Court, rule 8.452.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

## DISCUSSION

### I

Jamie asserts the jurisdictional finding on the petition DCFS filed on June 22, 2006, was erroneous; thus, the June 22 jurisdictional finding cannot begin the timing of her juvenile dependency case. She argues the charges that were filed related to this incident were reduced to a misdemeanor of being drunk in public, and her no contest plea to that charge cannot be used as the basis for the allegations of the petition.

These arguments fail. First, the Los Angeles County Juvenile Court's order of July 18, 2006, is final. The truth of the allegations found true on July 18 are not before us. "If an order is appealable . . . and no timely appeal is taken therefrom, the issues determined by the order are res judicata." (*In re Matthew C.* (1993) 6 Cal.4th 386, 393.) Jamie did not timely challenge the sufficiency of the evidence to support the court's jurisdictional findings and order. The order is now final and res judicata. (*In re Meranda P.* (1997) 56 Cal.App.4th 1143, 1150-1157.)

Also, the finding of dependency jurisdiction was based, not on a conviction in criminal court, but on the true finding on the allegation that Emily was at substantial risk of harm because Jamie, while under the influence of alcohol, pushed her in a stroller

across a busy intersection against a red light. The purpose of the provisions of dependency law is to provide maximum safety and protection of children. (§ 300.2.) The outcome of the criminal proceedings against Jamie regarding this incident has no bearing on the juvenile court's assumption of jurisdiction.

## II

Jamie next asserts the juvenile court did not understand her PTSD disability and ignored recent changes in the law which alter the way veterans are treated and greatly improve her access to treatment for her service-related PTSD. Her arguments are unfounded.

The court noted Jamie had endured "significant traumatic life experiences," but that she had already received more than two years of services and it could not find that six more months of services were likely to enable her to provide a safe home for Emily. The court further noted there had been no expert testimony regarding Jamie's PTSD or the treatment she expected would help her. The court's order was reasonable and well supported. Jamie has not shown error.

As to Jamie's claim that new laws enacted in October 2008 will change the way she is treated and improve her chances of recovering from PTSD, this information was not before the court at the jurisdictional and dispositional hearing in August, so cannot be the basis for reversing the court's order. (*In re Zeth S.* (2003) 31 Cal.4th 396, 413.) Moreover, the issue before the court was not the federal government's mental health treatment for veterans, but whether Jamie had been provided reasonable services, whether Emily could be returned to her care safely and whether the court should continue services

or shift the focus of the case to finding a permanent home for Emily. Jamie's argument regarding changes in the law for mental health treatment for veterans with PTSD fails.

### III

Jamie argues her May 2008 arrest for driving under the influence of alcohol and assaulting a police officer cannot be the basis for the court's true finding on the allegations of the section 387 petition because she will not be convicted of these charges. This argument is also without merit.

Substantial evidence supports the court's true finding on the allegations of the section 387 petition and its decision to remove Emily from Jamie's custody. A reviewing court must uphold a juvenile court's findings and orders if they are supported by substantial evidence. (*In re Amos L.* (1981) 124 Cal.App.3d 1031, 1036-1037.)

" ' ' ' "The rule is clear that the power of the appellate courts begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the trier of fact." ' ' ' ' " (*In re Tanis H.* (1997) 59 Cal.App.4th 1218, 1227.) The appellant bears the burden to show the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The June 2008 section 387 petition was based not on a criminal conviction, but on allegations Jamie had resumed using alcoholic beverages to excess and was arrested for driving under the influence of alcohol, resisting arrest and assaulting a police officer, and her substance abuse problem made her unable to provide adequate care for Emily. The court returned Emily to Jamie's care on February 11, 2008, while Jamie was still an

inpatient at KIVA. Jamie successfully completed the KIVA program on April 23 and, on May 16, the court terminated her from SARMS. However, a few days later, on May 25, after a weekend of drinking with neighbors, she was arrested for driving under the influence and assaulting police officers. Jamie admitted drinking and that she had not been seeing her therapist on a regular basis as required by her aftercare program.

Whether or not Jamie is ultimately convicted of criminal charges based on the May 25 incident, in light of her history of alcohol abuse and treatment, the fact that she resumed drinking alcohol and was arrested for driving under the influence of alcohol a short time after Emily had been returned provides substantial evidence to support the court's true finding under section 387. The outcome of the criminal case is not dispositive of the juvenile dependency findings.

The court did not abuse its discretion by terminating services and setting a section 366.26 hearing. A determination "committed to the sound discretion of the juvenile court . . . should not be disturbed on appeal unless an abuse of discretion is clearly established." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason." (*Id.* at pp. 318-319.) The court carefully considered whether to extend services beyond the statutory time limit and considered Emily's best interests and need for stability and permanency. The court reasonably found Jamie continued to deny her severe alcoholism, that it would likely take more than six months for her to be able to address the problem and it would not be in Emily's best interest to extend more services. Jamie has not shown an abuse of the court's discretion.



## DISPOSITION

The petition is denied. The stay issued on November 26, 2008, of the section 366.26 hearing previously scheduled for December 18, 2008, is vacated.

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IRION, J.

WE CONCUR:

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McDONALD, Acting P. J.

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McINTYRE, J.